

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**TAFT BURTTON,**

**Defendant.**

**CASE NO. 8:08CR7**

**ORDER**

This matter is before the Court on the Defendant's motions to stay (Filing No. 128) and for leave to appeal in forma pauperis (Filing Nos. 130, 133), the Defendant's notice of appeal (Filing No. 127), and the Clerk's in forma pauperis memorandum (Filing No. 129).

On February 28, 2011, the Defendant, Taft Burton, filed his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (§ 2255 motion), a request to expand the record under Rule 7 of the rules governing § 2255 proceedings, and a motion for an evidentiary hearing (Filing Nos. 114, 115, 116). On April 22, 2011, upon initial review, the Court summarily dismissed Claim I and a portion of Claim II regarding a suppression issue. A briefing schedule was established with respect to the remaining issues. (Filing No. 117.) The Court denied Burton's motion to reconsider the order. (Filing No. 123.) On June 2, 2011, the government filed its Answer. (Filing No. 124.) Burton did not file a response to the government's Answer. Rather, on June 27, 2011, he filed a motion for leave to supplement his § 2255 motion. (Filing No. 126.) The Court denied the motion, and Burton filed a notice of appeal. He appeals the Court's decision denying him leave to supplement his § 2255 motion.

In denying the motion for leave to supplement the § 2255 motion, the Court stated that the motion was filed "with an affidavit that Burton claims was initially received, but not

filed, by the Court. The Defendant has not explained why he waited two months after the Court's initial review to raise this matter.” (Filing No. 126.) The Court stands by its reasoning in denying the motion. The § 2255 motion is ripe for decision. An appeal at this stage in the proceedings is premature. Therefore, Burtton will not be granted leave to proceed in forma pauperis on appeal.

IT IS ORDERED:

1. The Defendant, Taft Burtton, is denied leave to proceed in forma pauperis on appeal;
2. The Defendant's motions for leave to proceed in forma pauperis on appeal (Filing Nos. 130, 133) are denied; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 22<sup>nd</sup> day of August, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge